

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201610447	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/21/2016 9:54 PM	Location of Incident: Utica Avenue and Lincoln Place	Precinct: 77	18 Mo. SOL 6/21/2018	EO SOL 6/21/2018	
Date/Time CV Reported Thu, 12/22/2016 4:54 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 12/22/2016 4:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Umar Khitab	20552	952929	077 PCT
2. SGT Gabriel Cuevas	02226	945633	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas stopped § 87(2)(b)	
B.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)	
C.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas refused to provide his shield number to § 87(2)(b)	
D.POM Umar Khitab	Abuse: Police Officer Umar Khitab refused to provide his shield number to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On December 22, 2016, § 87(2)(b) filed this complaint in person at the CCRB.

On December 21, 2016, at approximately 9:54 p.m., Sgt. Gabriel Cuevas and PO Umar Khitab were on patrol after receiving a report of a robbery. Sgt. Cuevas and PO Khitab were both dressed in plainclothes and assigned to an unmarked police vehicle. At the intersection of Utica Avenue and Lincoln Place, in Brooklyn, Sgt. Cuevas exited the vehicle and stopped § 87(2)(b) (**Allegation A**). PO Khitab exited the vehicle at a later point. Sgt. Cuevas frisked § 87(2)(b) (**Allegation B**). § 87(2)(b) requested Sgt. Cuevas' and PO Khitab's shield numbers and they did not provide them (**Allegations C and D**). § 87(4-b) § 87(2)(g)

§ 87(2)(g) No arrest was made and no summons was issued.

§ 87(2)(g) TARU footage was received 47 days after it was requested. As a result, both Sgt. Cuevas and PO Khitab had to be interviewed a second time. PO Khitab and Sgt. Cuevas were both unavailable for interviews during February because PO Khitab had training and Sgt. Cuevas was on vacation. PO Khitab's second interview was then rescheduled from March 8, 2017, to March 23, 2017, when it was determined that he was still in training in early March.

Video footage of this incident was obtained from TARU camera 6-1025, angle one. The full video can be found under Board Review 01. The SnagIt capturing this incident can be found under Board Review 02 and below. The transcription of the video can be found under Board Review 03.



201610447 SnagIt.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s second complaint filed with the CCRB (Board Review 04). § 87(2)(b)
- Sgt. Cuevas had five previous allegations stemming from three complaints with no substantiated allegations over his nine year tenure with the NYPD. Sgt. Cuevas had one previous frisk allegation in CCRB case number 200815352, which was exonerated.
- PO Khitab had 11 previous allegations stemming from four complaints with no substantiated allegations over his four year tenure with the CCRB. One case, 201609730, is still open. § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Gabriel Cuevas stopped § 87(2)(b)

It is undisputed that Sgt. Cuevas stopped § 87(2)(b) was interviewed at the CCRB on December 23, 2016 (Board Review 05). § 87(2)(b) was walking south on Utica Avenue wearing a puffy hooded black coat. When he reached the southwest corner of Utica Avenue and Lincoln Place, Sgt. Cuevas exited an unmarked police car and approached § 87(2)(b). Sgt. Cuevas asked § 87(2)(b) “What’s up?” Sgt. Cuevas asked § 87(2)(b) if he had any weapons on him. § 87(2)(b) told Sgt. Cuevas that he did not have any weapons on him. Sgt. Cuevas frisked § 87(2)(b). § 87(2)(b) asked Sgt. Cuevas why he was stopped and what Sgt. Cuevas’ probable cause was. PO Khitab told § 87(2)(b) that there was a robbery in the area and the suspect was wearing a black hooded sweatshirt. § 87(2)(b) is a black male, stands 6’ 3” tall, weighs 165 pounds, and was § 87(2)(b) old at the time of this incident.

Sgt. Cuevas was interviewed at the CCRB on February 8, 2017, and March 9, 2017 (Board Reviews 08 and 09). Sgt. Cuevas and PO Khitab responded to a radio run for a robbery in the vicinity of Eastern Parkway and Kingston Avenue, in Brooklyn. At the corner of Eastern Parkway and Kingston Avenue, a male stated that he was punched in the face and his cell phone was stolen. The male described the perpetrator as a black male in a black coat or sweater, between 20 and 30 years old. The perpetrator then ran east on Eastern Parkway. Sgt. Cuevas stated during his first interview that he and PO Khitab stopped one person at the intersection of Utica Avenue and Eastern Parkway who matched the description of the perpetrator. Sgt. Cuevas denied stopping anyone at Utica Avenue and Lincoln Place. Sgt. Cuevas described this individual as a black male wearing a black coat, standing about 5’11” or 6’ tall, and appeared to be between 20 and 30 years old. During his second interview at the CCRB, after being presented with the video, Sgt. Cuevas stated that he only stopped one person and that the stop he described in his first statement was the stop captured in the video at Utica Avenue and Lincoln Place. Sgt. Cuevas stated that he stopped § 87(2)(b) because he fit the description of perpetrator of the robbery.

PO Khitab was interviewed at the CCRB on January 25, 2017, and on March 23, 2017 (Board Reviews 06 and 07). PO Khitab’s statement was consistent with Sgt. Cuevas’ statement. PO Khitab stated that the victim described the perpetrator as a black male, about 5’7” – 5’9”, and wearing a black hooded sweatshirt. During his first interview at the CCRB, PO Khitab denied stopping anyone at the intersection of Utica Avenue and Lincoln place and stated that he only stopped someone named § 87(2)(b) at the intersection of Utica Avenue and Eastern Parkway. PO Khitab pointed out that Eastern Parkway is only one block south of Lincoln Place. During his second interview at the CCRB, after being presented with the video footage of this incident (Board Review 01-03), PO Khitab maintained that he and Sgt. Cuevas only stopped one person, but that the stop captured by the video was the same stop he had described in his first interview. PO Khitab stated that he and Sgt. Cuevas stopped § 87(2)(b) because he was wearing a black hooded sweatshirt and matched the description of the robbery suspect.

The event generated regarding this incident (Board Review 10) noted the location, 825 Eastern Parkway, in Brooklyn. At 9:37 p.m., a male caller stated he was punched in the face and his phone was stolen. The caller provided a description of the suspect as a black male, wearing a dark black hooded sweatshirt, who ran towards Albany Avenue.

The TARU footage of this incident (Board Review 01-03) depicts § 87(2)(b) walking south on Utica Avenue wearing a black hooded jacket with the hood up. At approximately

9:54:26 in the original video, or about 00:10 in the SnagIt version of the video, Sgt. Cuevas exits the vehicle and approaches § 87(2)(b).

The courts have held that an officer must have reasonable suspicion that someone is engaging, was engaged, or is about to engage in criminal activity in order to stop that person, People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 11).

The courts have further held in several cases that general descriptions are not sufficient to constitute reasonable suspicion, People v. Stewart, 41 N.Y.2d 65, 69 (Board Review 21), People v. Yiv C. Choy, 173A.D.2d 883 (Board Review 22), and People V. Dawkins, 163 A.D.2d 322 (Board Review 23).

In People v. Hargroves (296 A.D.2d 581 (2012)), the courts reviewed a similar case in which the assailant was described as a black male with an orange jacket or coat, and the courts held that this was not sufficient without additional factors that would connect the defendant with the crime (Board Review 24).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Sergeant Gabriel Cuevas frisked § 87(2)(b)

It is undisputed that Sgt. Cuevas frisked § 87(2)(b).

As noted above, § 87(2)(b) stated (Board Review 05) stated that after Sgt. Cuevas and PO Khatab stopped him, Sgt. Cuevas asked if he had any weapons on him. § 87(2)(b) told Sgt. Cuevas that he did not have any weapons on him. Sgt. Cuevas frisked § 87(2)(b) by patting his front two pants pockets. Sgt. Cuevas did not search § 87(2)(b)'s pockets or pat his back pockets or jacket pockets.

Sgt. Cuevas (Board Reviews 08 and 09) denied frisking anyone on the date of the incident, during his first interview. During his second interview, after viewing the TARU footage (Board Reviews 01-03), Sgt. Cuevas stated that the video refreshed his memory of the incident and that he remembered frisking § 87(2)(b) at the intersection of Lincoln Place and Utica Avenue. Sgt. Cuevas stated that he asked § 87(2)(b) if he had any weapons that could harm him or PO Khatab. § 87(2)(b) replied “no.” Sgt. Cuevas did not remember seeing any bulges on § 87(2)(b). When asked if he still suspected that § 87(2)(b) had any weapons on him, after § 87(2)(b) responded “no,” Sgt. Cuevas said “possibly.” When asked if there was anything that made Sgt. Cuevas think that § 87(2)(b) had a weapon on him, Sgt. Cuevas stated that he matched the description of the suspect in the robbery. Sgt. Cuevas did not recall if the suspect in the robbery was reported to have any weapons on him. Sgt. Cuevas stated that he frisked § 87(2)(b) for his safety. When asked to elaborate on why he feared for his safety, Sgt. Cuevas stated that a robbery is a violent crime and he wanted to make sure there were no weapons that

could harm him, PO Khitab, or anyone else around. When Sgt. Cuevas frisked § 87(2)(b) he did not feel anything that could have been a weapon.

PO Khitab (Board Reviews 06 and 07) denied ever observing Sgt. Cuevas frisk § 87(2)(b). PO Khitab indicated that he did not know Sgt. Cuevas frisked § 87(2)(b) until viewing the TARU footage during his second interview. During his first interview, PO Khitab stated that the victim of the robbery did not indicate that the suspect was armed.

The event generated regarding this incident (Board Review 10) noted that there were no weapons used during the robbery and that the robbery victim did not sustain any injuries.

The TARU footage of this incident (Board Review 01-03) depicts Sgt. Cuevas frisking § 87(2)(b) from about 00:17 to 00:28 in the SnagIt [9:54:33 p.m. to 9:54:44 in the original video].

An officer has the authority to frisk an individual if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed, People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 11), People v. Mack, 26 N.Y.2d 311 (1970) (Board Review 25).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Sergeant Gabriel Cuevas refused to provide his shield number to § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Umar Khitab refused to provide his shield number to § 87(2)(b)

It is not in dispute that § 87(2)(b) made a request for the shield numbers of Sgt. Cuevas and PO Khitab since Sgt. Cuevas confirmed this in his CCRB statement.

§ 87(2)(b) (Board Review 05) said to Sgt. Cuevas after he frisked him, “I’m going to need your badge number.” Both Sgt. Cuevas and PO Khitab were dressed in plainclothes. PO Khitab asked § 87(2)(b) if he had any ID before Sgt. Cuevas could respond. § 87(2)(b) felt that this was PO Khitab’s way of throwing off his request for Sgt. Cuevas’ shield number. § 87(2)(b) responded, “Sure, I have an ID. No problem. By the way, I would still like your badge number.” § 87(2)(b) said this in a respectful tone without raising his voice. Sgt. Cuevas told PO Khitab to “forget about it” and come on. The officers walked over to the car. § 87(2)(b) never took out his ID. As Sgt. Cuevas was getting in the car, § 87(2)(b) said again that he would like his badge number. Sgt. Cuevas responded saying, “You want my badge number? Then…” and his sentence trailed off. § 87(2)(b) was not sure if Sgt. Cuevas was insulting him, but thought he

might have been because the tone changed. § 87(2)(b) felt that the officers refused to provide their shield numbers because they knew that they were in the wrong and they were trying to hide something. After the officers got back in their vehicle, § 87(2)(b) looked at the officers' license plate and was able to obtain the license plate number: § 87(2)(e)

PO Khitab (Board Reviews 06 and 07) stated during his first interview that he did not refuse to provide his name or shield number to anyone on the date of the incident. During his second interview at the CCRB, PO Khitab stated that he did not recall if the individual he stopped verbally asked for his name or shield number, but stated that he gave the individual a contact card. PO Khitab did not recall if he verbally provided his name or shield number to the individual. After watching the TARU footage of the incident, PO Khitab reiterated that he did not recall if § 87(2)(b) requested his name or shield number. When asked to point out when in the video he gave § 87(2)(b) a contact card, PO Khitab stated that he could not point out when he did so because he could not see his left hand during the video. PO Khitab did not remember if § 87(2)(b) ever asked for Sgt. Cuevas' name or shield number. PO Khitab also confirmed during his first interview that he was driving an unmarked police vehicle with the license plate number § 87(2)(e)

Sgt. Cuevas (Board Reviews 08) stated during his first interview at the CCRB that he did not refuse to provide his name or shield number to anyone on the date of the incident. During his second interview at the CCRB (Board Review 09), when asked, "Did the individual ever ask for your shield number?" Sgt. Cuevas responded, "He asked for our shield numbers and PO Khitab gave it to him." Sgt. Cuevas was walking back to the RMP, while PO Khitab was talking to § 87(2)(b) and § 87(2)(b) stated, "I want your shield number." PO Khitab gave § 87(2)(b) his shield number. Sgt. Cuevas stated that § 87(2)(b) never asked him directly for his shield number and he did not provide § 87(2)(b) with his shield number. PO Khitab did not provide § 87(2)(b) with Sgt. Cuevas' shield number.

The TARU footage of this incident (Board Review 01-03) between 00:28 and 00:47 in the SnagIt [9:54:44 and 9:55:03 in the original] shows that, after Sgt. Cuevas frisks § 87(2)(b) he begins to walk back to the police vehicle while PO Khitab continues talking with § 87(2)(b). Sgt. Cuevas pauses twice before getting back in the vehicle and looks at § 87(2)(b) and PO Khitab. § 87(2)(b) takes something out of his back pocket with his left hand and gestures towards Sgt. Cuevas with his right hand. Sgt. Cuevas then gestures for PO Khitab to come back to the vehicle and PO Khitab walks back to the vehicle. The video does not capture PO Khitab ever handing § 87(2)(b) a contact card or any document. Additionally, at approximately 00:42 seconds in the SnagIt version of the video [approximately 9:54:58 in the original video], it is clear that § 87(2)(b) does not have anything in his right hand. In the video PO Khitab never hands § 87(2)(b) anything in his left hand. After the officers enter their car, § 87(2)(b) is pictured walking near the front of the officers' vehicle, but the pedestrian walk light blocks § 87(2)(b) so the video does not capture what he was doing.

Officers must courteously and clearly state their rank, name, shield number, and command, or otherwise provide them, to anyone who requests them to do so, Patrol Guide Procedure 203-09, "Public Contact – General" (Board Review 12).

§ 87(2)(g)

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(4-b) § 87(2)(g) [Redacted text block]

§ 87(4-b), § 87(2)(g) [Redacted text block]

§ 87(4-b) § 87(2)(g)

[Redacted text block]

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date